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May 24, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Oral Ex Parte, CC Docket No. 98-147

Dear Ms. Salas:

On May 23, 2000, Ruth Milkman, Lawler Metzger & Milkman, LLC, counsel to NorthPoint Communications, Inc., talked by telephone to Bill Kehoe about the Commission's action in response to the recent decision by the United States Court of Appeals for the D.C. Circuit regarding the Commission's collocation rules.

Sincerely,

Ruth Milkman

cc: Bill Kehoe

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Edward D. Young III
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Bell Atlantic

May 24, 2000

Mr. Lawrence Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-C312
Washington, DC 20554

Re: ALTS second request for a "rapid response team," CC Docket No. 98-147

Dear Mr. Strickling:

On May 18, ALTS renewed its previously-rejected request that the Commission establish a "rapid response team" to enforce the collocation rules that were vacated by the Court on appeal. This redundant request should be denied.

As you know, of course, Bell Atlantic and other local exchange carriers previously committed to allow existing and pending collocation arrangements to remain in place, and to follow any provisions of the Commission's rules that were not vacated, pending completion of the Commission's remand proceedings. The bureau concluded that these commitments "will facilitate the continuing development of competition in the local market," effectively denying ALTS' prior request to enforce the vacated rules through a collocation "rapid response team." Public Notice, DA 00-658 (rel. Apr. 27, 2000).

Nonetheless, ALTS has renewed its prior request. It claims that, left to their own devices, incumbent local exchange carriers will impair the ability of competing carriers to provide advanced services by attempting to "unilaterally interpret the [appellate] decision and impose their own definition of 'necessary.'" Contrary to ALTS' claim, however, they could not do so even if they tried. In reality, whether a particular type of equipment is necessary (as interpreted by the Court) will be decided instead by state commissions – for example, in the course of arbitrating disputes over the terms of interconnection agreements or reviewing proposed tariff changes. Indeed, ALTS' own claim that some incumbent local exchange carriers plan to file changes to their state collocation tariffs simply confirms this fact, since any such tariffs must be approved by the state commissions.

Moreover, ALTS claim that collocation tariffs will be modified to disadvantage advanced service providers in particular conflicts with reality. The simple fact is that Bell Atlantic (as well as other carriers) voluntarily permitted the collocation of DSLAMs even

before the Commission issued its new rules. And there is nothing in the Court's decision that would cause this to change. Quite the contrary, in the wake of the Court's decision, Bell Atlantic has committed to continue to permit collocation of equipment that is used to provide advanced services, including ATM multiplexers, routers, packet switching equipment, and splitters.

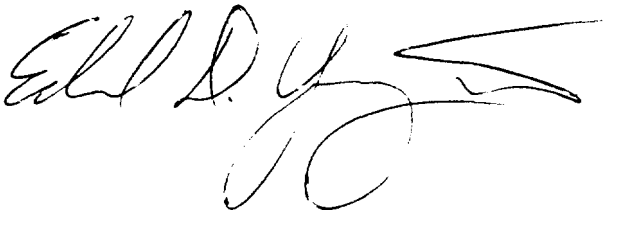
Even apart from the fact that there is no problem to be addressed, the so-called "solution" that ALTS proposes also is unlawful for several reasons. First, it wants the Commission to enforce the very rules that the Court vacated. That, of course, is something the Commission simply lacks authority to do.[1] That alone should be the end of the matter.

Second, ALTS claims that, because telecommunications equipment is becoming increasingly multi-functional, all such equipment is "necessary" within the meaning of section 251(c)(6). This is precisely the argument that the Court rejected. The Court found that the Commission's blanket rule requiring collocation of multi-functional equipment contained no "limiting standard" and would require collocation of equipment with functions that were "not truly 'necessary'" for interconnection or access to unbundled network elements. Instead, collocation is required only for "equipment that is directly related to and thus necessary, required, or indispensable to 'interconnection or access to unbundled network elements.'" Contrary to ALTS' claims, this does not preclude collocation of all multi-functional equipment, but simply equipment that is not "necessary."

Third, ALTS concocts a new claim that the Commission should rely on section 251(c)(2) of the Act to require collocation of any type of multi-functional equipment that an incumbent deploys. But this flatly contradicts the Commission's own finding that section 251(c)(6) is the Commission's sole authority to require local exchange carriers to provide physical collocation of other carriers' equipment.[2]

While ALTS accuses incumbent local exchange carriers of attempting to "unilaterally impose their view" of what the Court's decision requires, it really is ALTS itself that is trying to impose its own view and prejudge the result of the Commission's remand proceeding. Its attempt to do so should be rejected – again.

Sincerely,



[1] *See* Letter from Keith Townsend, United States Telecom Association to Lawrence Strickling (dated Apr.. 21, 2000), *citing* City of Cleveland, Ohio v. Federal Power Commission, 561 F.2d 344, 346 (D.C. Cir. 1977); Iowa Utilities Board v. FCC, 135 F.3d 535, 541-43 (8th Cir. 1998).

[2] *See* Local Competition Order, 11 FCC Rcd 15499, ¶ 551 (1996).

cc: Chairman William Kennard
Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Jonathan Askin
Dorothy Attwood
Rebecca Beynon
Kathy Brown
Michelle Carey
Kyle Dixon
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